

Article - Criminal Law

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§8-611.

- (a) (1) In this section the following words have the meanings indicated.
- (2) “Counterfeit mark” means:
- (i) an unauthorized copy of intellectual property; or
 - (ii) intellectual property affixed to goods knowingly sold, offered for sale, manufactured, or distributed, to identify services offered or rendered, without the authority of the owner of the intellectual property.
- (3) “Intellectual property” means a trademark, service mark, trade name, label, term, device, design, or word adopted or used by a person to identify the goods or services of the person.
- (4) “Retail value” means:
- (i) a trademark counterfeiter’s selling price for the goods or services that bear or are identified by the counterfeit mark; or
 - (ii) a trademark counterfeiter’s selling price of the finished product, if the goods that bear a counterfeit mark are components of the finished product.
- (5) “Trademark counterfeiter” means a person who commits the crime of trademark counterfeiting prohibited by this section.
- (b) A person may not willfully manufacture, produce, display, advertise, distribute, offer for sale, sell, or possess with the intent to sell or distribute goods or services that the person knows are bearing or are identified by a counterfeit mark.
- (c) If the aggregate retail value of the goods or services is \$1,000 or more, a person who violates this section is guilty of the felony of trademark counterfeiting and on conviction:
- (1) is subject to imprisonment not exceeding 15 years or a fine not exceeding \$10,000 or both; and
 - (2) shall transfer all of the goods to the owner of the intellectual property.
- (d) If the aggregate retail value of the goods or services is less than \$1,000, a person who violates this section is guilty of the misdemeanor of trademark counterfeiting and on conviction:
- (1) is subject to:

(i) for a first violation, imprisonment not exceeding 18 months or a fine not exceeding \$1,000 or both; or

(ii) for each subsequent violation, imprisonment not exceeding 18 months or a fine not exceeding \$5,000 or both; and

(2) shall transfer all of the goods to the owner of the intellectual property.

(e) An action or prosecution for trademark counterfeiting in which the aggregate retail value of the goods or services is less than \$1,000 shall be commenced within 2 years after the commission of the crime.

(f) Any goods bearing a counterfeit mark are subject to seizure by a law enforcement officer to preserve the goods for transfer to the owner of the intellectual property either:

(1) under an agreement with the person alleged to have committed the crime; or

(2) after a conviction under this section.

(g) State or federal registration of intellectual property is prima facie evidence that the intellectual property is a trademark or trade name.

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